

HB232 - Land Use Amendments

2017 Utah State Legislature



WHAT IT MEANS FOR LOCAL GOVERNMENT
LAND USE PLANNING

Land Use Task Force



3 Parts

HB232

- Land Use Process
- “Plain Language”
- Compliance
 - State Code
 - Case Law

Land Use Process

- **Emphasizes “3-Hats” Roles**
- **Defines Terms**



HB232

- 10-9a-306 (3) A land use decision of a land use authority is an **administrative act**, even if the land use authority is the legislative body
- 10-9a-501 (1) Only a **legislative** body may **enact** a land use regulation
- 10-9a-707 (5) An appeal authority's land use decision is a **quasi-judicial act**, even if the appeal authority is the legislative body

“3-Hat” Roles

- Legislative



- Administrative

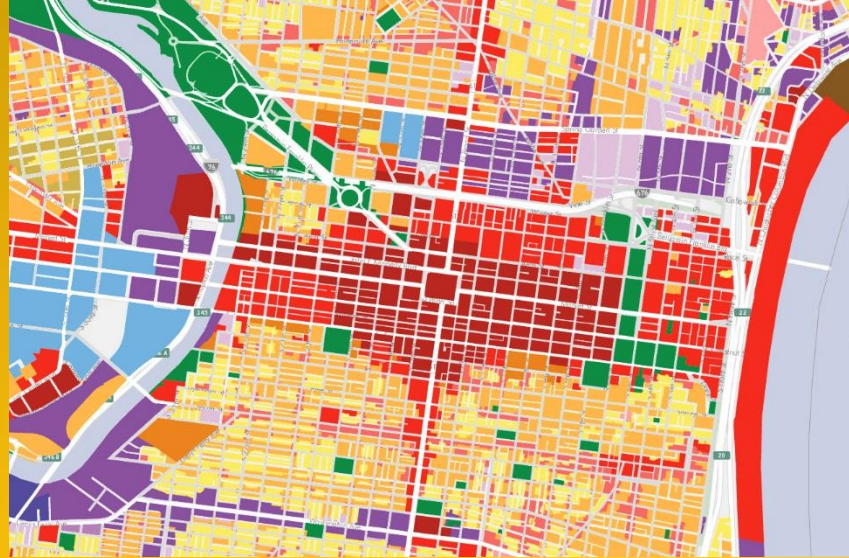
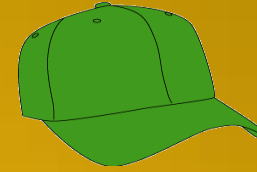


- Quasi-Judicial

Appeals & Variances



Legislative Actions



- Adoption or amendment of General Plan
- Adoption or amendment of Land Use Ordinances
- Zonings or rezones
- Annexations
- Adoption of fee schedules, design standards

Legislative Action



- Relates to adoption of policy and rules to implement that policy
- Decisions are more political than legal
- Public opinion welcome!
- Preferences of legislative body given broad deference by the courts
- Usually only challengeable if tries to do something clearly illegal
- Actions are referable!

Administrative Actions



- Issuance of building permits
- Site plan reviews
- Conditional use permits
- Subdivision reviews
- Land use application approvals

Administrative Action



- Items being considered under the rules established by ordinances
- Decisions are more legal & technical, rather than political (not policy)
- Strict standards of review in the courts – there must be “substantial evidence” for the action taken
- No public clamor! Input to be evidence-based
- NOT Referrable!



Quasi-Judicial



- Appeals

- Like a court hearing
- On the record
- Evidence for decision

- Variances

- “Safety valve”
- Strict requirements
- Based on unique circumstances

Legislative



Administrative



Appeals



Players in Land Use Process



Governing Body



Planning Commission



Land Use Authority



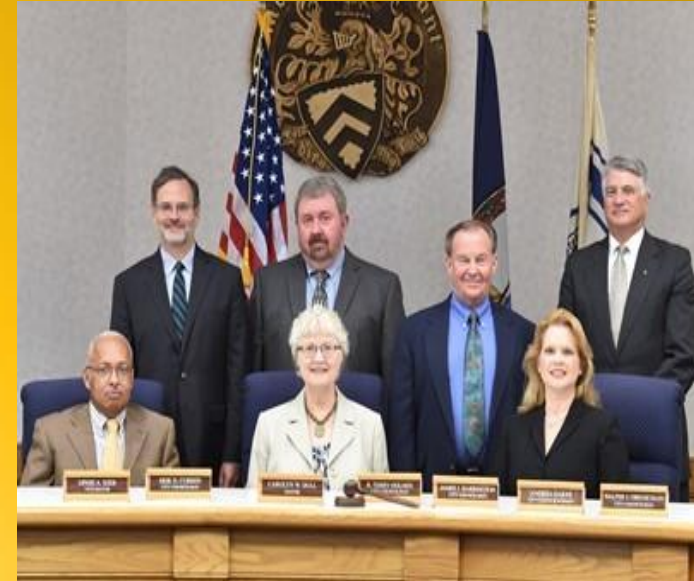
Appeal Authority

Governing Body

Elected Officials

Legislative process

- Make policy
- Political process – opinion!
- Adopt rules to implement policy



Governing Body

- Adopt, amend General Plan
- Adopt, amend Land Use Regulations
- HB232 – “Only a legislative body may enact a land use regulation”

HB232 – New definition

- Land Use Regulation – “ordinance, law, code, map, resolution, specification, fee or rule that governs the development of land”
- Does not include “general plan”



Planning Commission

Legislative Process

- Recommend General Plan
- Recommend Land Use Regulations
- Recommend Land Use, Appeal Authorities
- Recommend application (administrative) process

That's it!



Land Use Authority

- Administrative Process
- Act upon a land use application – make land use decisions
- Evidence!



HB232- New Definition

- Land Use Decision
 - Final action on a land use application to obtain a land use permit
- Land Use Application
 - Required application to obtain a land use decision
 - Does not include applications to enact, amend or repeal land use regulations
 - Rezones!
 - Ordinance text changes
 - General plan amendments

Appeal Authority

- Quasi-Judicial process
- Hear, decide:
 - Appeals of land use decisions
 - Variance applications



Who's Who?



Governing Body

- Elected Officials



Planning Commission

- Appointed citizens



Land Use Authority

- Planning Commission?
- Another board?
- Staff (Zoning Admin)
- Avoid governing body!



Appeal Authority

- Board Adjustment
- Hearing Officer
- Not LUA!
- Ditto!

Applications Processes



- Land Use Application

Land Use Authority



Appeal Authority



Courts



- LU Regulation Amd Application

Planning Commission



Governing Body



Referendum

“Plain Language”

- **HB232 - Section 306**

(1) A land use authority shall apply the **plain language** of land use regulations.

(2) If a land use regulation does not plainly restrict a land use application, the land use authority shall interpret and apply the land use regulation to **favor the land use application**.

HB232 – Section 707

(4) The appeal authority shall:

(a) determine the correctness of the land use authority's interpretation and application of the **plain meaning** of the land use regulations; and

(b) interpret and apply a land use regulation to **favor** a land use **application** **unless** the land use regulation **plainly restricts** the land use application.

Patterson v. Utah County Board of Adjustment

1995

“In this case, we cannot rely on the plain language of the ordinance to guide our interpretation.

“A statute is ambiguous if it can be understood by reasonably well-informed persons to have different meanings.”



Patterson v. Utah County Board of Adjustment

1995

“...because zoning ordinances are in derogation of a property owner’s common-law right to unrestricted use of his or her property, provisions therein **restricting** property uses should be **strictly construed**, and provisions **permitting** property uses should be **liberally construed in favor of the property owner.**”



Example: Brown vs. Sandy City BOA



City code: “short term rental not specifically permitted in residential zones”

Court: “a short term rental is residential, not differentiated in city code”

“since not specifically prohibited, construed liberally in favor of the land owner and is permitted”

Be Clear and Specific!



Unclear code language

What Does This Mean?

- “In keeping with neighborhood character”
- “Shall not negatively impact the area”
- “Shall not significantly increase traffic, odors, light...”
- “Other similar uses”



HB232 – Comply with State Codes

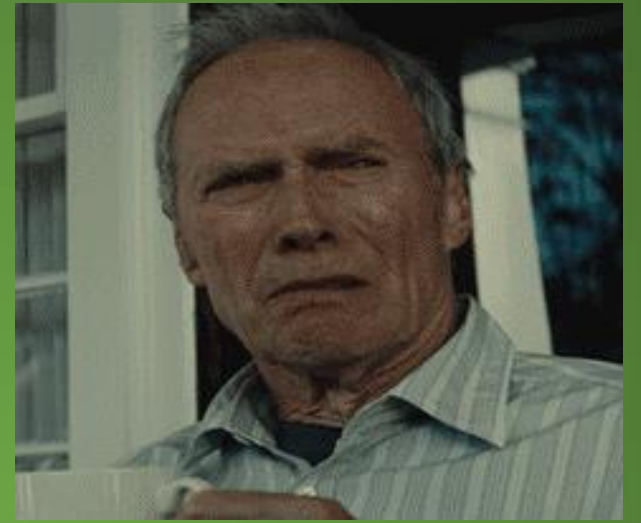
- Section 104

- (1) Except as provided in Subsection (2), a municipality may enact a land use regulation imposing stricter requirements or higher standards than are required by this chapter.
- (2) A municipality may not impose a requirement or standard that **conflicts** with a provision of this chapter, other state law, or federal law.

Example: Conditional Use Permits



Does your code still say this?



- “Conditional use application may be approved, approved with conditions, or denied...”
- “Any other conditions that may be imposed by the Planning Commission”

Other examples:

- Amortization (especially billboards)
- Rezone notifications, dealing with objections
- Landscaping requirements for sf homes (counties only)
- Appeal authority standard of review
- Impact fees processed
- Political Signs
- Subdivision plat requirements
- Improvement bonds
- Regulation of
 - High tunnels
 - Wetlands
 - Refineries